

BEFORE THE
STATE COMMITTEE OF PSYCHOLOGISTS
STATE OF MISSOURI

STATE COMMITTEE OF PSYCHOLOGISTS)
3605 Missouri Boulevard)
P. O. Box 1335)
Jefferson City, MO 65102)

Petitioner,)

v.)

TOM HARTLINE)
1271 S. Salt Pond)
Marshall, MO 65340)

Respondent.)

FILED
AUG 08 2007

MISSOURI STATE COMMITTEE
OF PSYCHOLOGISTS

000072 AUG-15

No. PY-05-07

JOINT MOTION FOR CONSENT ORDER, JOINT STIPULATION OF FACTS,
WAIVER OF HEARING BEFORE THE STATE COMMITTEE OF PSYCHOLOGISTS,
AND JOINT DISCIPLINARY ORDER WITH JOINT STIPULATED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

The State Committee of Psychologists ("Committee") and Thomas Hartline ("Hartline") waive the right to a hearing of the above-styled case before the State Committee of Psychologists and jointly stipulate to the facts and consent to the imposition of disciplinary action against the psychology license of Hartline for violations of the statutes set forth below.

Hartline acknowledges that he has received and reviewed a copy of the Complaint filed by the Committee in this case, and has received a copy of the Notice of Hearing issued by the Committee on May 2, 2007, and submits to the jurisdiction of the Committee in this matter.

Hartline acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the

Complaint served upon him by the State Committee of Psychologists prior to the entering of its order; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by the Committee concerning the complaint pending against him; and the right to a ruling on questions of law by the Committee. Being aware of these rights provided him by operation of law, Hartline knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearing Before the State Committee of Psychologists, and Joint Disciplinary Order with Joint Stipulated Findings of Fact and Conclusions of Law ("Joint Stipulation and Disciplinary Order") and agrees to abide by the terms of this document as they pertain to him.

I

Based upon the foregoing, the Committee and Hartline jointly stipulate to the following and request that the State Committee of Psychologists adopt as its own the Joint Stipulated Findings of Fact and the Joint Stipulated Conclusions of Law as the Committee's Findings of Fact and Conclusions of Law:

Joint Stipulated Findings of Fact

1. Petitioner, the State Committee of Psychologists ("Committee"), is an agency of the state of Missouri created and established pursuant to § 337.050, RSMo,¹ for the purpose of executing and enforcing the provisions of §§ 337.010 through 337.093, RSMo.

2. Respondent, Tom Hartline ("Hartline"), is licensed by the Committee as a

¹All statutory references are to Missouri Revised Statutes 2000, unless otherwise indicated.

psychologist, License No. 01591. Hartline's license is current and active, and was so at all times relevant herein.

3. On June 1, 2004, the Administrative Hearing Commission entered its Decision finding cause to discipline Hartline for intentionally billing Medicaid for services he did not render.

4. On August 17, 2004, the Committee and Hartline entered into a Waiver of Hearing Before the State Committee of Psychologists and Joint Agreed Disciplinary Order ("Disciplinary Order") placing Hartline's license on probation for a period of five years.

5. The Disciplinary Order provides that if the Committee determines that Hartline has violated any term or condition of his probation, the Committee may vacate the Disciplinary Order and impose additional discipline as it deems appropriate.

6. Jurisdiction and venue are proper before this Committee pursuant to § 620.153, RSMo.

7. J. B. was referred to Hartline for counseling by a friend. J.B.'s initial therapy session with Hartline took place on December 1, 2004, and Hartline thereby established a psychologist/client relationship with J.B. Hartline met with J.B. for 14 sessions between December 1, 2004, through March 2, 2005.

8. Hartline allegedly exploited his professional relationship with J.B.

9. On April 7, 2005, J.B. filed a complaint against Hartline with the State Committee of Psychologists.

10. In response to the Committee's investigation of J.B.'s complaint against Hartline, Hartline allegedly provided altered records to the Committee regarding his treatment of J.B.

Joint Stipulated Conclusions of Law

11. Hartline's conduct as alleged herein constitutes exploitation of his professional relationship with J.B. in violation of 4 CSR 235-5.030 of the Ethical Rules of Conduct,² which state in relevant part:

(4) Impaired Objectivity and Dual Relationships

(D) Prohibited Exploitation in Professional Relationships. The psychologist shall not exploit, sexually or otherwise, his/her professional relationship with clients, supervisees, students, employees, research participants or others.

....

12. Hartline's conduct as alleged herein constitutes a failure to cooperate with the Committee in violation of 4 CSR 235-5.030 of the Ethical Rules of Conduct, which state in relevant part:

(F) Cooperating With the Committee. The psychologist cooperates with the State Committee of Psychologists by responding personally or through his/her attorney to inquiries. Failure to do so is, in itself, an ethics violation.

....

13. Hartline's conduct as alleged herein constitutes misconduct in the performance of the functions or duties of the practice of psychology.

14. Based on the allegations herein, cause exists to discipline Hartline pursuant to § 337.035.2, RSMo, which states in relevant parts:

²Effective in August of 2006, the Division of Professional Registration was transferred from the Department of Economic Development to the Department of Insurance, and subsequently the Code of State Regulations pertaining to the Division of Professional Registration were renumbered. The language of those regulations remained the same.

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

....

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

....

15. Based on the allegations herein, cause exists to impose further discipline upon
Hartline pursuant to § 620.153, RSMo, which states:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

16. Based on the allegations herein, cause exists to impose further discipline upon
Hartline pursuant to Page 9, Paragraph 3 of the Disciplinary Order, which states in part:

Upon the determination of the State Committee of Psychologists that the Respondent has failed to comply with the terms

of this Disciplinary Order, the Committee may revoke Respondent's license or may take such other or additional disciplinary action against Respondent or Respondent's license as the Committee deems appropriate.

....

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of § 621.045.3, RSMo 2000. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the State Committee of Psychologists, or at 12:01 a.m. on August 15, 2007, whichever is later, without further action by either party:

1. Hartline's license as a psychologist is hereby REVOKED. Hartline shall return all indicia of licensure, including all copies and originals of his psychology license, wall hanging, and wallet certificate to the State Committee of Psychologists on or before the effective date of this revocation. Hartline shall complete wind-down of his practice and his practice shall be closed on or before the effective date of this revocation.

2. Hartline agrees not to apply for licensure with this Committee for a period of five years from the effective date of this disciplinary order. Should Hartline apply for licensure after the expiration of five years, the decision to issue a license to Hartline shall be at the sole discretion of the Committee.

3. Hartline does not admit the allegations set forth herein.

4. The parties agree that this Joint Stipulation and Disciplinary Order, and the terms, conditions and recitals set forth herein, are intended solely and exclusively for the purpose of settling the disputes between Hartline and the Committee pertaining to this proceeding.

5. The parties agree that this Joint Stipulation and Disciplinary Order resolves all allegations contained in the Complaint in this matter and none of those allegations will be the subject of any further litigation between the parties. The parties agree to waive all rights to further review and appeal in this matter.

6. The Committee agrees not to institute any further legal proceedings of any kind against Hartline arising out of the facts or allegations of this case.

7. The parties to this Joint Stipulation and Disciplinary Order understand that the State Committee of Psychologists will maintain this Joint Stipulation and Disciplinary Order as an open and public record of the Committee as provided in Chapters 610 and 620, RSMo.


8. The terms of this Joint Stipulation and Disciplinary Order are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

9. Respondent hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation and Disciplinary Order. The parties acknowledge that this paragraph is severable from the remaining portions of this Joint Stipulation and Disciplinary

Order in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation and Disciplinary Order or any portion thereof void or unenforceable.

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearing Before the State Committee of Psychologists, and Joint disciplinary Order with Joint Stipulated Finding of Fact and Conclusions of Law and to the termination of any further proceedings before the State Committee of Psychologists based upon the Complaint filed by Petitioner in the above-styled action.

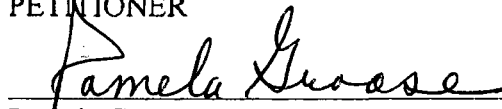
RESPONDENT


Tom L. Hartline

Date

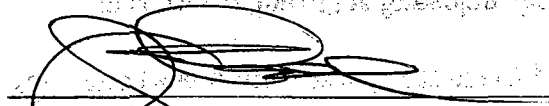
7/02/07

PETITIONER


Pamela Groose
Executive Director
State Committee of Psychologists

Date

August 8, 2007



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Attorney for Respondent.

Date

7-02-07

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Attorney for the State Committee
of Psychologists

Date

July 27, 2007

BEFORE THE
STATE COMMITTEE OF PSYCHOLOGISTS
STATE OF MISSOURI

FILED
SEP 17 2004
MISSOURI STATE COMMITTEE
OF PSYCHOLOGISTS
py

STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

v.)

TOM HARTLINE,)

Respondent.)

No. 03-0299 PS

CONSENT ORDER

The State Committee of Psychologists has jurisdiction pursuant to § 621.110, RSMo 2000, and § 337.035.3, RSMo 2000.

On August 17, 2004, the parties filed a "Waiver of Hearing Before the State Committee of Psychologists and Joint Agreed Disciplinary Order ("Disciplinary Order")." As jointly requested and agreed by the parties in the Disciplinary Order, we adopt the Findings of Fact and Conclusions of Law as set forth in the Decision of the Administrative Hearing Commission entered June 1, 2004, finding that the licensee is subject to discipline. We incorporate the Disciplinary Order and AHC Decision into this Consent Order.

It is the order of the State Committee of Psychologists that the Disciplinary Order entered into between the parties is hereby effective the date of this Consent Order.

SO ORDERED EFFECTIVE THIS 17th DAY OF SEPTEMBER 2004.

STATE COMMITTEE OF PSYCHOLOGISTS

Pamela Groose

Pamela Groose
Executive Director

BEFORE THE
STATE COMMITTEE OF PSYCHOLOGISTS
STATE OF MISSOURI

FILED
AUG 17 2004
MISSOURI STATE COMMITTEE
OF PSYCHOLOGISTS
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STATE COMMITTEE OF PSYCHOLOGISTS,)
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Petitioner,)
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v.)
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TOM HARTLINE,)
)
Respondent.)

No. 03-0299 PS

WAIVER OF HEARING BEFORE THE
STATE COMMITTEE OF PSYCHOLOGISTS
AND JOINT AGREED DISCIPLINARY ORDER

The State Committee of Psychologists ("Committee") and Tom Hartline ("Respondent") waive the right to a hearing of the above-styled case before the State Committee of Psychologists and jointly stipulate to the facts and consent to the imposition of disciplinary action against the psychologist license of Respondent for violations of the statutes set forth below.

Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by the State Committee of Psychologists with the Administrative Hearing Commission in this case and a copy of the Decision entered by the Administrative Hearing Commission, and the parties submit to the jurisdiction of the Administrative Hearing Commission and the State Committee of Psychologists in this matter.

Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to a hearing before the Committee on the question of discipline to be imposed against Respondent, the right to appear and be represented by counsel, the right to have all

charges against Respondent proven upon the record by competent and substantial evidence, the right to cross-examine any witness appearing at the hearing against Respondent, the right to present evidence on Respondent's own behalf at the hearing, the right to a decision upon the record by the Committee concerning the question of discipline to be imposed against Respondent, and the right to a ruling on questions of law by the Committee. Being aware of these rights provided the Respondent by operation of law, Respondent, Tom Hartline, knowingly and voluntarily waives each and every one of these rights and freely enters into this Waiver of Hearing Before the State Committee of Psychologists and Joint Agreed Disciplinary Order ("Disciplinary Order") and agrees to abide by the terms of this document as they pertain to Respondent.

Findings of Fact and Conclusions of Law

Based upon the foregoing, Petitioner and Respondent jointly request that the State Committee of Psychologists adopt as its own the Findings of Fact and Conclusions of Law as set forth in the Decision of the Administrative Hearing Commission entered June 1, 2004.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Committee of Psychologists in this matter under the authority of § 621.110, RSMo 2000. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the ~~Administrative Hearing Commission~~ *State Committee of Psychologists RPS 9/13/04* without further action *9/14/04* by either party.

1. Respondent's psychologist license, No. PY01591, is hereby placed on PROBATION for a period of five years. The period of probation shall constitute the disciplinary period. During the disciplinary period, Respondent must adhere to the following terms and conditions:

I. REQUIREMENTS REGARDING AUDIT OF PRACTICE

A. At Respondent's expense, Respondent must undergo a financial audit conducted by a certified public accountant (CPA) four times per year to assess Respondent's billing practices. This financial audit requirement applies to Respondent's current clients for billings subsequent to the date this Disciplinary Order becomes effective and all new clients acquired by Respondent during the disciplinary period. Within 20 business days of the effective date of this Disciplinary Order, Respondent shall submit a list of no less than three proposed CPAs to conduct the audit. The Committee may approve a CPA from this list or may require a second list of three CPAs which Respondent shall submit within 20 business days of the Committee's request. Respondent must begin the audit within 30 days of the Committee's approval. Respondent must immediately notify the Committee, in writing, of the start date of the audit. The audits must be performed at least four times per year from the effective date of this Disciplinary Order. Prior to the first audit being conducted, Respondent shall provide a copy of this Disciplinary Order to the CPA approved to conduct the audits. If the auditing CPA should change pursuant to the terms of this Disciplinary Order, each subsequent CPA approved by the Committee shall also be provided a copy of this Disciplinary Order prior to conducting his or her first audit.

(1) Audit reports must be submitted by the auditing CPA to the State Committee of Psychologists at least once every four months. Audit reports must be received before March 1, June 1, September 1, and December 1 of each year. It shall be Respondent's responsibility to ensure that the written audit is submitted by the auditing CPA to the State Committee of Psychologists.

(2) Respondent shall abide by any recommendations made by the auditing CPA set forth in the written report of the audit.

(3) In the event the CPA becomes unable or decides not to continue serving in his/her capacity as a CPA for Respondent during the disciplinary period, the Respondent shall:

a. within three business days of being notified of the CPA's inability or decision not to continue serving as the auditor, or otherwise learning of the need to secure a CPA, advise the Committee in writing that he is needing to secure a CPA and the reasons for such change; and

b. within 20 business days of being notified of the CPA's inability or decision not to continue serving as the CPA or otherwise learning of the need to secure a CPA, secure a CPA from those previously approved by the Committee, or if no other CPA has previously been approved by the Committee, submit a list of no less than three proposed CPAs, to conduct the audit pursuant to and in accordance with the terms and conditions set forth in this Disciplinary Order.

(4) Respondent must give the State Committee of Psychologists, or its representative, permission to review Respondent's billing records.

B. If Respondent successfully abides by all of the terms of this Disciplinary Order and otherwise successfully completes the first year of probation, Respondent may petition the State Committee of Psychologists to require less frequent audits and reports of

audits. The decision to change these requirements is at the sole discretion of the State Committee of Psychologists.

II. REQUIREMENTS REGARDING MONITORING OF RESPONDENT'S PRACTICE

A. Respondent's practice as a professional psychologist shall be monitored on a monthly basis by a psychologist approved by the State Committee of Psychologists. This practice monitor requirement applies to Respondent's current clients for record keeping subsequent to the date this Disciplinary Order becomes effective and all new clients acquired by Respondent during the disciplinary period. Within 20 business days of the effective date of this Disciplinary Order, Respondent shall submit a list of no less than three proposed psychologists to monitor Respondent's practice as a professional psychologist. The Committee may approve a psychologist from this list or may require a second list of three psychologists which the Respondent shall submit within 20 business days of the Committee's request. Monitoring is defined as a monthly review of Respondent's clinical records and face-to-face discussion of Respondent's record keeping practices. This review shall be held in the monitor's or Respondent's office. If Respondent fails to submit a list of three proposed monitors within 20 business days from the effective date of this Disciplinary Order, or within 20 days of any subsequent request from the Committee, Respondent shall cease practicing psychology until a monitoring psychologist is secured. If Respondent fails to secure a monitoring psychologist within 20 business days after the Committee's approval of a proposed monitor, Respondent shall cease practicing psychology until a monitoring psychologist is secured. Respondent shall be responsible for any payment associated with the monitoring. Prior to the first review by the monitoring psychologist, Respondent shall

provide a copy of this Disciplinary Order to the psychologist approved as monitor. If the monitoring psychologist should change pursuant to the terms of this Disciplinary Order, each subsequent monitoring psychologist approved by the Committee shall also be provided a copy of this Disciplinary Order prior to conducting his or her first review.

(1) In the event the monitoring psychologist becomes unable or decides not to continue serving in his/her capacity as a monitoring psychologist or otherwise ceases to serve as a monitoring psychologist during the period of probation, then the Respondent shall:

a. within three business days of being notified of the monitoring psychologist's inability or decision not to continue serving as the monitoring psychologist, advise the State Committee of Psychologists in writing that he is needing to secure a monitoring psychologist and the reason for such change; and

b. within 20 business days of being notified of the monitoring psychologist's inability or decision not to continue serving as the monitoring psychologist, or otherwise learning of the need to secure a monitoring psychologist, secure a monitoring psychologist from those previously approved by the Committee, or if no other monitoring psychologist has previously been approved by the Committee, submit a list of no less than three proposed monitoring psychologists, to monitor Respondent's practice pursuant to and in accordance with the terms and conditions set forth in this Disciplinary Order. If Respondent fails to secure a previously approved monitoring psychologist, or fails to submit a list of proposed monitoring psychologists, within 20 business days of being notified of the monitoring psychologist's inability or decision not to continue serving as the monitoring

psychologist, or otherwise learning of the need to secure a monitoring psychologist, Respondent shall cease practicing psychology until a monitoring psychologist is secured.

B. Respondent's monitoring psychologist must report to the State Committee of Psychologists at least once every four months on Respondent's compliance with this Disciplinary Order. Reports must be received before March 1, June 1, September 1, and December 1 of each year. It is Respondent's responsibility to ensure that these reports are provided in a timely manner.

C. If Respondent successfully abides by all of the terms of this Disciplinary Order and otherwise successfully completes the first year of probation, Respondent may petition the State Committee of Psychologists to require less frequent monitoring and reports of monitoring. The decision to change these requirements is in the sole discretion of the State Committee of Psychologists.

III. REQUIREMENTS REGARDING RESPONDENT'S PRACTICE

During the disciplinary period, Respondent must inform Respondent's employers and all hospitals, institutions, and managed health care organizations with which Respondent is affiliated, that Respondent's work as a professional psychologist is under probation by the State Committee of Psychologists.

IV. REQUIREMENTS REGARDING CONTINUING EDUCATION

During the first year of probation, Respondent, at his own expense, shall complete four clock hours of continuing education in professional ethics in the practice of psychology. The continuing education program(s) shall be approved by the Committee prior to Respondent beginning the program(s). Prior to beginning any program, Respondent shall submit documentation to the Committee regarding the institution through which the program is offered, content of the program, number of clock hours awarded for satisfactory completion of the program, and other such documentation as may be requested by the Committee. The continuing education required by this paragraph is in addition to any continuing education required for renewal of licensure. Failure to complete the required continuing education prior to the end of the first year of probation shall be deemed a violation of this Disciplinary Order.

V. GENERAL REQUIREMENTS

A. Respondent may not serve as a supervisor for any psychological trainee; psychological intern; psychological resident; psychological assistant; practicum student; or any person undergoing training and/or supervision as a psychologist, social worker, professional counselor, marriage and family therapist, or any other profession regulated by Chapter 337, RSMo.

B. Respondent must keep the State Committee of Psychologists apprised at all times, in writing, of Respondent's current home and work addresses and telephone numbers.

C. Respondent is required to pay to the State Committee of Psychologists, in a timely fashion, all requisite fees required by law to renew and keep current Respondent's psychology license in Missouri.

D. Respondent is required to comply with all provisions of Chapter 337, RSMo; the rules and regulations duly promulgated by the State Committee of Psychologists; and state and federal criminal laws.

E. Respondent must provide periodic reports to the State Committee of Psychologists of Respondent's compliance with this Disciplinary Order every six months. Reports must be received before March 1 and September 1 of each year.

F. At Respondent's expense, Respondent must agree to meet with the State Committee of Psychologists at reasonable intervals designated by the Committee.

2. The parties to this Disciplinary Order understand that the State Committee of Psychologists will maintain this Disciplinary Order as an open and public record of the Committee as provided in Chapters 337, 610, and 620, RSMo.

3. Upon the determination of the State Committee of Psychologists that the Respondent has failed to comply with the terms of this Disciplinary Order, the Committee may revoke Respondent's license or may take such other or additional disciplinary action against Respondent or Respondent's license as the Committee deems appropriate. No order shall be entered by the State Committee of Psychologists pursuant to this paragraph of this Disciplinary Order without notice and an opportunity for hearing before the Committee in accordance with the provisions of Chapter 536, RSMo.

4. Upon the expiration and successful completion of the disciplinary period, Respondent's license as a psychologist in Missouri shall be fully restored, provided all provisions of this agreement and all other requirements of law have been satisfied.

5. If the State Committee of Psychologists determines that the Respondent has violated a term or condition of this Disciplinary Order, or has otherwise failed to comply with the provisions of Chapter 337, RSMo, which violation would also be actionable in a proceeding before the State Committee of Psychologists, Administrative Hearing Commission, or the circuit court, the State Committee of Psychologists may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Disciplinary Order in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Disciplinary Order occurred during the disciplinary period, the State Committee of Psychologists may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, it may impose further discipline. The State Committee of Psychologists retains jurisdiction to hold a hearing to determine if a violation of this Disciplinary Order has occurred.


6. The terms of this Disciplinary Order are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Disciplinary Order nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

7. Respondent hereby waives and releases the State Committee of Psychologists, its members and any of its employees, agents, or attorneys, including any former committee members,

employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Disciplinary Order. The parties acknowledge that this paragraph is severable from the remaining portions of this Disciplinary Order in that it survives in perpetuity even in the event that any court of law deems this Disciplinary Order or any portion thereof void or unenforceable.


In consideration of the foregoing, the parties consent to the entry of record and approval of this Waiver of Hearing Before the State Committee of Psychologists and Joint Agreed Disciplinary Order and to the termination of any further proceedings before the Administrative Hearing Commission and State Committee of Psychologists based upon the Complaint filed by the Petitioner in the above-styled action. Respondent agrees not to contest the Decision of the Administrative Hearing Commission and/or the terms of this Disciplinary Order; and waives all rights to appeals, including, but not limited to, any right to rehearing and/or judicial review.

RESPONDENT


Tom Hartline

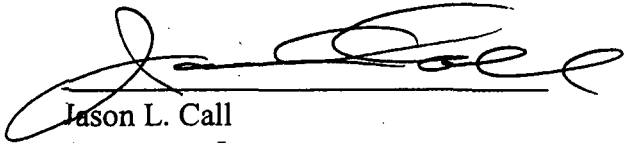
Date 8/02/04

PETITIONER


Pamela Groose
Executive Director
State Committee of Psychologists

Date 8-17-04

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Attorneys for Petitioner

Before the
Administrative Hearing Commission
State of Missouri



STATE COMMITTEE OF
PSYCHOLOGISTS,

Petitioner,

vs.

TOM HARTLINE,

Respondent.

No. 03-0299 PS

DECISION

Tom Hartline is subject to discipline because he intentionally billed Medicaid for services that he did not render to two clients.

Procedure

The State Committee of Psychologists (the Committee) filed a complaint against Hartline on February 28, 2003. On August 11, 2003, this Commission held a hearing in the case. Assistant Attorney General Ronald Q. Smith represented the Committee. Attorney Lawrence R. McClure represented Hartline. At the hearing, the Committee amended its complaint, narrowing the time frame in two allegations and reducing the number of occasions of alleged conduct in three paragraphs. At the request of this Commission, the Committee filed a copy of the complaint with these amendments noted after the hearing.

Findings of Fact

1. The Committee issued Hartline a psychologist license.
2. His license is current and active and was so at all times relevant to this decision.
3. At all times relevant to this decision, Hartline maintained a practice as a psychologist at 855 South Ellsworth, Marshall, Missouri.
4. Hartline was an approved provider of psychological services under the Missouri Medicaid Program ("Medicaid"), Provider No. 496653510.
5. The Medicaid billing system is based on a numeric code system.
6. Medicaid Place of Service Code 12 indicates that services were provided at the client's home.
7. Through April 30, 1998, Medicaid Procedure Code 90843 indicated that individual therapy services were provided.
8. After April 30, 1998, Medicaid Procedure Code 90804 indicates that individual therapy services were provided.
9. Medicaid Procedure Code 90847 indicates that family therapy services with the client present were provided.
10. Therapy services are billed to Medicaid in 30-minute units.
11. A Medicaid provider must provide at least 20 minutes of face-to-face service with the client and spend the remaining 10 minutes in an activity directed toward the client.
12. Medicaid reimbursement for each service requires the date and actual time taken to deliver the service be documented in the client's medical record.
13. Medicaid reimbursement for a session billed as two units requires that at least 45 minutes of face-to-face time be spent with the client, with the remaining time spent in an activity directed toward the client.

14. Medicaid reimburses \$5 more per unit for out-of-office sessions than in-office sessions.

15. The provider is responsible for submitting the correct billing codes when billing Medicare for services provided.

Client T.H.

16. S.H. is the mother of T.H.

17. T.H., S.H., and S.H.'s mother participated in family counseling with Hartline.

18. Around February 25, 1997, Tate Simonton was murdered in Saline County, Missouri.

19. T.H. was acquainted with Tate Simonton.

20. On February 26, 1997, S.H. requested Hartline to provide a crisis session with T.H. regarding the emotional upset he was having about the murder of the Simonton child.

21. Hartline provided a one-hour crisis intervention session from 8 p.m. to 9 p.m. on February 26, 1997, for T.H. Hartline billed Medicaid for two units of crisis intervention services.

22. From February 15, 1997, through July 27, 1997, Hartline conducted 20 sessions of family therapy with S.H. and T.H. The sessions were for one hour. These were at the residence of S.H.'s mother, where S.H. and T.H. were also living. Hartline billed Medicaid for two units for each session as family therapy with the client present.

23. Hartline billed Medicaid for two units of individual counseling with T.H. conducted on June 13, 2003. He did not conduct the session because T.H. was away at Boy Scout camp. Hartline's billing for this session was by mistake.

Client P.N.

24. P.N. lived with Mary Urcioli from around the age of five through his freshman year of high school and into the beginning of his sophomore year of high school.

25. P.N. lived with Jeff and Laurie Horner between approximately the fall of his sophomore year of high school through the end of his junior year of high school.

26. Jeff and Laurie Horner were teachers at Malta Bend High School during this period.

27. P.N. was attending Malta Bend High School during this period.

28. Jeff and Laurie Horner took P.N. to school each day during a period that they resided in Marshall, Missouri.

29. P.N. moved in with foster family Dale and Juanita Miller around June 1996, before starting his senior year of high school.

30. P.N. lived with the Millers during his senior year of high school until graduation from high school.

31. P.N. graduated from high school in May 1997.

32. P.N. was enrolled at Missouri Valley College in the fall of 1997 and the fall of 1998.

33. P.N. did not receive a degree from Missouri Valley College.

34. After graduating from high school, P.N. left foster care and lived with the family of a friend, the Cook family.

35. Hartline provided P.N. with no family counseling sessions after P.N. graduated from high school and left his last foster family in June 1997.

36. Hartline never went to P.N.'s place of residence after February 1997.

37. Between July 24, 1997, and March 30, 1998, Hartline billed Medicaid for eight family therapy sessions with the client present at two units per session. Hartline represented that

these family sessions were at P.N.'s home. Hartline did not provide these services and knew that he did not when he billed Medicaid for them. Hartline intended for Medicaid to rely on these representations to pay him for the services.

38. During P.N.'s senior year of high school, P.N. was employed at Consumer Markets. Hartline asked P.N. if Hartline could come to P.N.'s job site to hold counseling sessions.

39. Hartline visited P.N. at his job at Consumer Markets during P.N.'s senior year of high school about once per week. Hartline's stated purpose for these visits was to provide individual therapy to P.N. Hartline's visits with P.N. at his job lasted between five and 20 minutes because P.N. had only so much time for his breaks and because customers had to be attended to.

40. No counseling took place during these visits with P.N. at Consumer Markets.

41. Between February 10, 1997, and March 30, 1998, Hartline submitted claims to Medicaid representing that he provided two units of individual therapy services to P.N. on 56 different occasions. Hartline submitted these billings knowing that he had not provided counseling services and knowing that he could not get paid for such short sessions even if he had provided counseling. Hartline intended for Medicaid to rely on these representations to pay him for the services.

42. During Hartline's association with P.N., Hartline loaned P.N. \$300, which P.N. never repaid.

Client L.R.

43. Between July 1998 and May 1999, L.R. lived with foster parent Lillian Harris.

44. Hartline scheduled no family counseling appointments with Ms. Harris and L.R.

45. Hartline conducted no counseling sessions with Ms. Harris and L.R.

46. L.R. had visitation with relatives every weekend.

47. Between August 7, 1998, and February 5, 1999, Hartline billed Medicaid for 15 family therapy sessions with L.R. present. Hartline represented that these family sessions occurred at L.R.'s home.

48. None of the family therapy sessions in dispute for which Hartline billed Medicaid were on weekends.

49. Hartline billed Medicaid for the 15 family therapy sessions knowing that he had not provided those counseling services. He intended for Medicaid to rely on these representations to pay Hartline for the services.

50. Hartline received payment from Medicaid for all of the services in dispute regarding T.H., P.N., and L.R.

Conclusions of Law

This Commission has the jurisdiction to hear this complaint. Section 621.045.¹ The Board has the burden of proving that Hartline has committed an act for which the law allows discipline. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

At the hearing, Respondent's Exhibit E, a portion of the 1992 Medicaid Provider Psychology Counseling Manual, was marked and used by Hartline in direct testimony, but it was neither offered nor admitted.² We admit Respondent's Exhibit E at this time.

The Committee asserts that cause exists to discipline Hartline under § 337.035.2(4), (5), (6), (13), and (15), which allow discipline for:

¹Statutory references are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

²The transcript reflects that the parties believed it had been admitted.

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

The regulation that the Committee accuses Hartline of violating is in the Ethical Rules of Conduct that the Committee has promulgated. That regulation is at 4 CSR 235-5.030, which provides:

(9)(A)3. The psychologist shall not exploit a client or responsible payor by charging a fee that is excessive for the services performed

(9)(B)4. The psychologist shall not bill for services that are not rendered. . . .

(11)(B). Use of Fraud, Misrepresentation or Deception. The psychologist shall not use fraud, misrepresentation or deception . . . in billing clients or third-party payors, in providing psychological service . . . or in conducting any other activity related to the practice of psychology.

Fraud is an intentional perversion of truth to induce another person to act in reliance upon it. *Hernandez v. State Bd. of Registration for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997). It requires the intent that others rely on the misrepresentation. *Sofka v. Thal*, 662 S.W.2d 502, 506 (Mo. banc 1983); see also *Missouri Dental Bd. v. Bailey*, 731 S.W.2d 272 (Mo. App., W.D. 1987). "Concealment of a material fact of a transaction, which a party has the duty to disclose, constitutes fraud as actual as by affirmative misrepresentation." *Daffin v. Daffin*, 567 S.W.2d 672, 677 (Mo. App., K.C.D. 1978). That duty arises when the concealer is a fiduciary or has superior knowledge. *Nigro v. Research College of Nursing*, 876 S.W.2d 681, 686 (Mo. App., W.D. 1994). We may infer fraudulent intent from the circumstances of the case. *Essex v. Getty Oil Co.*, 661 S.W.2d 544, 551 (Mo. App., W.D. 1983).

Deception is the act of causing someone to accept as true what is not true. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 298 (10th ed. 1993). The Supreme Court has held that "deception" contemplates an act designed to deceive, to cheat someone by inducing their reliance on clever contrivance or misrepresentation. It is not a word hidden from common understanding. *State ex rel. Nixon v. Telco Directory Publishing*, 863 S.W.2d 596, 600 (Mo. banc 1993). We may infer deceitful intent from the facts and circumstances of the case. *Essex*, 661 S.W.2d at 551.

Misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake. *Hernandez*, 936 S.W.2d at 899 n.3.

Dishonesty is a lack of integrity, a disposition to defraud or deceive. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 333 (10th ed. 1993). Dishonesty includes actions that reflect adversely on trustworthiness. See *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

Client T.H.

February 26, 1997

The amended complaint alleges that Hartline did not render a crisis intervention session with client T.H. on February 26, 1997. There was no evidence to support the allegation. T.H. did not testify. The Committee presented the testimony of T.H.'s mother, S.H. She testified that Hartline did come to the house and pick up T.H. for that session. Hartline also testified that he provided this crisis intervention service. He presented his progress notes, which includes a note for the February 26, 1997, crisis intervention. We conclude that the Committee failed to prove this allegation. It is not cause for discipline.

June 13, 1997

The amended complaint alleges that Hartline did not hold an individual session with T.H. on June 13, 1997. S.H. testified that T.H. was at scout camp that week. The scoutmaster testified through affidavit that T.H. was at camp all that week. Hartline admitted that he did not give a counseling session that day and that he "mistakenly" made out a progress note for that meeting. He testified that he then mistakenly submitted a billing for that day. He said this was the result of being distracted by a huge workload. We conclude that Hartline's billing for this service was a mistake and not intentional. It is not cause for discipline.

20 family therapy sessions

The amended complaint alleges that Hartline billed for at least 20 family therapy sessions occurring from February 11, 1997, to July 27, 1997. The only proof that he did not render the services for T.H. is the testimony of S.H. S.H.'s testimony was contradictory. She testified on direct examination by the Committee's attorney that the family therapy sessions stopped two or three months after the crisis intervention session on February 26, 1997. (Tr. at 88.) On cross-

examination, S.H. testified that family therapy ended after the latter part of January 1997. (Tr. at 102 and 109.) On re-direct, she testified that there were no family sessions after February 26, 1997. (Tr. at 123.) There was little in S.H.'s demeanor as a witness that inspired confidence. She was defensive when answering questions and could remember little of the details of events that occurred six years before the hearing. We conclude that the Committee failed to present a preponderance of credible evidence to prove its allegations. There is no cause for discipline.

Client P.N.

The amended complaint alleges that Hartline billed for 56 individual sessions with P.N., occurring from February 10, 1997, to March 30, 1998, and for eight family sessions with P.N. present occurring from July 24, 1997, to March 30, 1998. The Committee alleges that the sessions did not occur.

The Committee presented the testimony of P.N. He claimed that his individual sessions and family sessions with Hartline were primarily in his junior year of high school, fall of 1995 to spring of 1996. He worked at Consumers Supermarket in his senior year from 1997 to 1998. P.N. claimed that Hartline asked him if he could hold his counseling sessions at P.N.'s work place, during breaks. P.N. testified that from February 1997 until no later than December 1997, Hartline had individual sessions with him only at the Consumers Supermarket. These sessions lasted on the average only ten minutes, and the longest was 20 minutes. P.N. said that the sessions were so short because he was on the job and had to take care of customers.

According to Medicaid rules, a session must last at least 30 minutes to be billed (at least 20 minutes face-to-face time with client and the other ten minutes filled with activity that is directed toward benefiting the client, but not documentation or travel). The billings were for two units each session, which means 60-minute sessions (each unit being 30 minutes). Medicaid

requires at least 45 minutes of face-to-face time in a 60-minute session with any remainder for activity directed toward the benefit of the client.

Hartline asserts that he did not counsel P.N. at the supermarket for the sessions at issue, that they were just friendly visits. He said that he saw P.N. during that time at the market when Hartline happened to be in the store for shopping. Hartline would always look up P.N. when Hartline went to the supermarket and talk briefly with him. Hartline states that he did not bill for those encounters. Hartline did not testify as to where the individual sessions did take place that he billed for from February 10, 1997, to March 30, 1998. Yet the place of service code on his billing is "12," designating P.N.'s home.

Hartline also points to many inconsistencies or uncertainties in P.N.'s testimony about such matters as when he was released from juvenile court custody, what family he was living with, and whether he had an associate degree. However, P.N.'s testimony about matters relevant to whether his counseling sessions were held was consistent both on direct and on cross-examination. There was no reason for P.N. to lie. Hartline had been friendly to him and had even loaned him \$300 that P.N. had never repaid.

Hartline maintains that he faithfully documented the sessions in his progress notes. The notes hardly bolster Hartline's claim. The notes are very brief and are practically identical from session to session. They indicate the time of day during which the session was held and a brief generalized description of the session. The notes do not state where the sessions took place or who was present at the family sessions.

We conclude that the Committee has proven its allegations by a preponderance of the credible evidence. Hartline billed for individual and family counseling services to P.N. that he did not render. His conduct constitutes cause for discipline under § 337.035.2(4) for having

obtained compensation by fraud, deception and misrepresentation. As fraud and misrepresentation, as well as misconduct and dishonesty, it is also cause to discipline under § 337.035.2(5). It is a breach of the rules of ethical conduct promulgated as rules by the committee, so it also violates § 337.035.2(6) and (15). Finally, there is cause to discipline under subdivision (13) because Hartline's conduct violated the trust or confidence placed in him by the administrator of the public funds from which he was paid.

Client L.R.

The amended petition claims that Hartline billed for 15 family therapy sessions with L.R. present from August 7, 1998, to February 5, 1999.

L.R. did not testify. Lillian Harris was L.R.'s foster parent during that time. She testified, by telephone, that the only sessions that Hartline had were with L.R. individually. He would pick up L.R. at home and take her to Sonic for these sessions. She testified that he never had any family sessions with her. She had no memory of dates, but claimed she recalled the lack of family sessions because: "I can remember, I never had a counseling with just him, L and I. I think that's the one reason why that -- I'm sorry. I don't mean any harm by saying this -- that Mr. Hartline doesn't stand out like the other three counselors did. . . . Because they always made sure that they connected with me and I connected with them." (Tr. at 15.) At Transcript page 28, Ms. Harris testified that she does not recall things when there was no problem associated with the event. Evidently, Harris had a problem with the way Hartline failed to communicate with her and that is why she recalled that there were no family therapy sessions.

Hartline testified that he held the family sessions with L.R. and Harris in Harris' living room and in the kitchen. Hartline has the usual practically identical progress notes for the sessions, indicating the time of day during which the session was held and a brief, general

description of issues. The notes do not state where the sessions took place or who was present at the family sessions. Hartline said (and Harris admitted) that Harris has narcolepsy. He stated that she fell asleep during two of the sessions. He speculated that the narcolepsy and her age hindered her memory of the sessions. This is not persuasive. Harris' falling asleep at two sessions would not account for her forgetting about the other sessions.

Hartline claimed that some of the sessions occurred at the home of the relative that L.R. visited on weekends, yet none of the dates of the sessions fell on weekends.


We conclude that the Committee has proven its allegations by a preponderance of the credible evidence. Hartline billed for services that he did not render to L.R. We find cause for discipline in connection with this conduct under § 337.035.2(4), (5), (6), (13), and (15) for the same reasons as those discussed above in connection with his billings for P.N.

Summary

We find no cause to discipline Hartline for the alleged billing irregularities regarding T.H.

We conclude that there is cause to discipline Hartline under § 337.035.2(4), (5), (6), (13), and (15) regarding his billings for P.N. and L.R.

SO ORDERED on June 1, 2004.


KAREN WINN
Commissioner